Remarks

This Amendment is responsive to the **August 24, 2007** Office Action. Reexamination and reconsideration of **claims 1-21 and 23-37** is respectfully requested.

Summary of The Office Action

In view of the Appeal Brief filed on Feb. 19, 2007, prosecution was reopened.

Claims 1-12 and 35-37 were allowed.

Claims 25-34 were rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

Claims 13-18, 20-21, 24-27 and 29-34 were rejected under 35 U.S.C. §102(b) as being anticipated by Christenson et al. (USPN 6,324,620).

Claims 19, 23 and 28 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The Present Amendment

Independent claim 20 has been canceled.

Dependent claim 23 was indicated to be allowable if rewritten in independent for. Claim 23 is now rewritten in independent form including the limitations of parent claim 20. Claim 23 should now be allowed. Accordingly, dependent claims 21 and 24 should also be allowed.

ndependent claim 25 has been amended to recite the body of allowed claim 1. Thus, claim 25 should now be allowed.

Dependent claim 28 was indicated to be allowable if rewritten in independent form. Claim 28 is now rewritten in independent form including the limitations of parent claim 25. Claim 28 should now be allowed.

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I. Claims 25-34 were rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

The rejection is based on the definition of computer-readable media in the specification, which appears on page 2, paragraph [0014]. Paragraph [0014] is amended by this response to delete the transmission media language from the definition. Thus, the claims are statutory subject matter and the rejection should be withdrawn.

II. Claims 13-18, 20-21, 24-27 and 29-34 were rejected under 35 U.S.C. §102(b) as being anticipated by Christenson et al. (USPN 6,324,620).

Independent Claim 13

The Office Action cites Christenson column 6, lines 45-67 and column 12, lines 18-32, lines 62-67; and column 13, lines 1-8 as teaching all elements of claim 13. Column 6, lines 45-67 describe that a DASD is partitioned into a HOT partition and a COLD partition but does not discuss metering:

> DASD partitioning divides each DASD unit of the system into a smaller HOT partition containing frequently accessed data (Hot Data) and a larger COLD partition containing infrequently accessec data (Cold Data).
>
> (Christenson, column 6, lines 50-53)

Column 12 was apparently cited to teach the metering elements of claim 13 however it fails to teach the claimed elements. Claim 13 recites:

> increasing response time for access requests to a first predefined region within the storage device by metering access requests to a second predefined region within the storage device.

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Christenson, however, teaches that the priority of a job controls the access to data, not metering access to a particular region:

> ...requests for the data are dependent upon the priority of the job or task of the overall application in accordance with another aspect of the present invention. ...
>
> In that way, the priority of the job will dictate the data access and the designation of the requested data as HOT or COLD will also affect the prioritization of data access.
>
> (Christenson, column 12, lines 18-20, and 29-31, respectively).

In this same paragraph, Christenson describes how access requestS are processed. The process states that a COLD access request from a high priority job is processed before a HOT access request from a low priority job:

> Not until all the data for the high priority job has been accessed will a request for HOT data for a low priority job be handled.
>
> (Christenson, column 12, lines 26-28).

Therefore, Christenson does not meter access requests between regions but rather processes the requests by job priority. Thus Christenson fails to teach "increasing response time for access requests to a first predefined region within the storage device by metering access requests to a second predefined region within the storage device" as recited in claim 13.

Christenson fails to teach each and every element of claim 13 and thus fails to establish a prima facie anticipation rejection. The rejection is improper and should be withdrawn. Accordingly, a prima facie anticipation rejection has not been established for dependent claims 14-18 and the rejection should be withdrawn. These claims should now be allowed.

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Dependent claim 14

Claim 14 depends from claim 13. The Office Action on page 3 cites Christenson column 12, lines 18-32 as teaching claim 14 and states "the number of request[s] processed to the cold region is limited, for a period of time, to the number [of] high priority requests to the cold region." Applicant respectfully submits that this section does not describe this statement. Christenson does not limit COLD access requests but rather teaches that all requests from a high priority job are processed before any request from a low priority job. Christenson's example specifically states that all COLD requests from a high priority job are processed before a HOT request from a low priority job (column 12, lines 26-28). Therefore, job priority dictates the priority of processing (column 12, line 30). Furthermore, the cited section says nothing about limiting access requests based on a threshold number of access requests as recited in claim 14. Therefore, the rejection is not supported and should be withdrawn.

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Conclusion

For the reasons set forth above, **claims 1-19, 21 and 23-37** patentably and unobviously distinguish over the references and are allowable. An early allowance of all claims is earnestly solicited.

Respectfully submitted,

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